

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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In Re:) Case No. 19-30088
) Chapter 11
PG&E CORPORATION AND PACIFIC)
GAS AND ELECTRIC COMPANY) San Francisco, California
) Tuesday, October 17, 2023
Reorganized Debtors.) 10:00 AM
)
STATUS CONFERENCE REGARDING
SECURITIES PLAINTIFFS' MOTION
FOR THE APPLICATION OF
BANKRUPTCY RULE 7023 AND THE
CERTIFICATION OF A CLASS OF
SECURITIES CLAIMANTS. FILED
BY SECURITIES LEAD PLAINTIFF
AND THE PROPOSED CLASS
[13865]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

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1 SAN FRANCISCO, CALIFORNIA, TUESDAY, OCTOBER 17, 2023, 10:00 AM

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3 (Call to order of the Court.)

4 THE CLERK: Court is now in session, the Honorable
5 Dennis Montali presiding. Calling the matter of PG&E Corp.

6 THE COURT: Morning. Morning, Mr. Slack.

7 MR. SLACK: Good morning, Your Honor.

8 THE COURT: Or good afternoon for you, I guess.

9 MR. SLACK: That's true. That's true.

10 THE COURT: (Indiscernible). Huh?

11 MR. SLACK: I was going to -- I was going to say, Your
12 Honor, if we could bring in Joshua Hamilton from Latham &
13 Watkins who's going to be joining me today.

14 THE COURT: Okay. Ms. Parada, do you have Mr.
15 Hamilton in the -- waiting?

16 THE CLERK: Yes, I see him on the list. I'll bring
17 him in now.

18 THE COURT: All right. Mr. Dubbs, would you state
19 your appearance. Or Mr. Etkin, you can --

20 MR. DUBBS: Good morning, Your Honor.

21 THE COURT: Well, whichever of you is going to make
22 the argument, or both of you, Etkin, Dubbs, state your names.

23 MR. DUBBS: This is Mr. Dubbs. Thomas Dubbs from
24 Labaton for PERA. Good morning, Your Honor.

25 THE COURT: Morning.

1 MR. ETKIN: Good morning, Your Honor.

2 THE COURT: Mr. Hamilton.

3 MR. HAMILTON: Morning, Your Honor.

4 MR. ETKIN: Michael Etkin --

5 THE COURT: Okay.

6 MR. ETKIN: (Indiscernible) sorry.

7 THE COURT: I'm just being polite with everybody. Mr.
8 Etkin, good morning.

9 MR. ETKIN: Good morning, Your Honor.

10 THE COURT: Mr. Hamilton.

11 MR. ETKIN: Good to see you. I'm joining, but
12 primarily given the subject matter of today's conference, Mr.
13 Dubbs is going to handle it on behalf of PERA.

14 THE COURT: Mr. Dubbs, you can leave your camera off
15 if you want, or you can leave it on, turn it on. It's up to
16 you.

17 Well, Mr. Etkin, the same as at a prior hearing, you
18 don't need to stay on the (indiscernible) if you don't want to.
19 You're welcome to. I don't mind looking at you. But if you
20 fall asleep, I'll notice it.

21 I do have a couple of preliminary questions before I
22 take the argument.

23 Oh, well, do we have -- wait a minute. Do we have an
24 appearance from RKS and Mr. Bodnar or anyone else? Anyone from
25 RKS appearing today?

1 THE CLERK: Your Honor, I just received an email from
2 Mr. Bodnar's firm requesting the Zoom link. I will send that
3 to them now.

4 THE COURT: Okay. Well, let me take care of a couple
5 of preliminaries.

6 Mr. Slack, I see that you have uploaded the orders
7 dealing with the twenty-sixth omnibus objections and my
8 disposition of the PERA so-called objection, and I plan to sign
9 those orders right after the hearing. Are there any last-
10 minute changes or any additional folks that got to you and
11 saved the day, or is the order ready to go?

12 MR. SLACK: The order is ready to go, Your Honor. And
13 as Your Honor alluded to, just to be clear on the record
14 because we did get some -- we did get some requests to make it
15 clear that the order we submitted, even though we didn't get
16 any formal objections or informal objections, there were people
17 who took the opportunity, as we said in our objection, that if
18 they responded to the offers, we'd withdraw them. So we've
19 identified those in a report to Your Honor. And our exhibit,
20 in fact, takes those people off of the exhibit. And we're no
21 longer pressing the objection with respect to those people.

22 THE COURT: Okay. Well, I certainly gleaned that from
23 the paper filed by CalPERS' counsel. But the other ones, there
24 was not a filing. And so it was fine. I'm glad we got it
25 taken care of. And then those orders will just be entered.

1 And pursuant to my docket text, I'm not going to act anything
2 further on it unless we have some last-minute need to
3 accommodate someone.

4 I have a request for Mr. Dubbs and Mr. Etkin. Mr.
5 Etkin, you've been in this case for a long time, and I think
6 what I'd like you and Mr. Dubbs to do going forward, if -- this
7 is no criticism of your local counsel, Ms. Michelson, who I've
8 known for years, but I'd like the signature of the brief on the
9 page so I know who to blame if there's an issue and --

10 MR. ETKIN: Okay.

11 THE COURT: -- what poor Ms. Michelson, as her name
12 appears on everything you file and everybody else's names, but
13 I don't make it a habit of criticizing, and hopefully I don't.
14 But if there are issues, I like to know who's the principal
15 author.

16 But I want to turn to the merits. And I have to say,
17 this is a rarity for me to complain about what, Mr. Etkin, you
18 or Mr. Dubbs, did, but I'm going to complain. I waited and
19 waited for something to come in. I watch the docket
20 faithfully. And nothing from PERA. Nothing from PERA. And I
21 realized that there some -- it was perhaps a no meeting of the
22 minds and the efforts to meet-and-confer.

23 So finally, I guess it was day before yesterday, I get
24 a filing from the debtor, Mr. Slack, and I get -- and I will
25 have to confess to Mr. Slack, I didn't read all twenty-seven of

1 his exhibits, or yet, but I read the papers. But I didn't see
2 Exhibit 21, which was your term sheet, or your proposal. And
3 it was only when Ms. Grassgreen filed something for her client
4 that I saw that was the -- I shouldn't have called it a term
5 sheet, maybe that's the wrong word, from you. And I thought,
6 well, why didn't I know about that until one day before the
7 hearing?

8 So last night, at dinnertime or whatever, I got the
9 filing from you. And I'm not asking you to do anything, except
10 just be mindful that when some very substantive things come in
11 at the last minute, it's a challenge for me to keep up with it.
12 And that being said, I've got a couple of very, very
13 fundamental questions.

14 The first one probably is more substantive than
15 anything else. And again, if Mr. Dubbs would rather answer
16 this, that's okay. But in the filing of yesterday, which is
17 the -- we'll call the securities (indiscernible) response, the
18 statement, it's made right on page 2 in the second or third
19 paragraph of the argument, that they, meaning the debtors, are
20 not correct in saying that the PSLRA controls. And the
21 argument goes on, the Bankruptcy Rules control. Okay. That's
22 a position. I don't think I'd heard that before.

23 But then the next sentence says, to the extent the
24 PSLRA applies in bankruptcy, a modification is warranted.
25 Well, it either applies or it doesn't. And if you really

1 believe that the PSLRA doesn't apply, I don't know how you can
2 sort of say, well, just apply it partway.

3 So I just say to you, if you really believe that the
4 law and the Bankruptcy Procedures -- I won't say preempt PSLRA,
5 but simply replace in the bankruptcy setting, then that's your
6 position. And then you've got to convince me if that's
7 correct. And it hasn't -- I don't think you've cited any case
8 law that says that and any authority for that.

9 So it's just a -- it's sort of a the-night-before-the-
10 hearing-I'm-presented-something-that-is-brand-new, and then to
11 get more brand-new, I don't recall that there was ever any
12 suggestion that you for PER, either jointly with the debtor or
13 on your own, were going to make a motion to withdraw the
14 reference. But you have every right to make a motion to
15 withdraw the reference. I don't question your right to do it.

16 The question is when we've had all these discussions
17 about procedure, if you're sitting on a strategy to withdraw
18 the reference, my first answer is if Judge Davila withdraws the
19 reference, I'll send him a bottle of his favorite wine, and I
20 will have two years not to worry about this case. But I also
21 bet on the 49ers to win last Sunday, and I was wrong. Judge
22 Davila, as I recall, about three years ago put his case on hold
23 pending the bankruptcy. And unless the Ninth Circuit has made
24 a ruling in the last twenty-four hours, I believe that Judge
25 Davila isn't going anywhere on that litigation. And if you

1 want to make a motion to withdraw the reference, fine. But my
2 guess is that he's not going to take it so --

3 But in the context of this scheduling, I don't know
4 what to do about it because again, you have every right to make
5 it. Your timetable says you're going to make it. And the next
6 thing that happens is seven-to-fourteen days after the district
7 court grants the motion, well, first of all, it may never grant
8 the motion. It may deny it. And second of all, if it grants
9 it, who knows when it's going to grant it or when it's even
10 going to consider it. And I don't know what to make of then
11 putting right smack in the early stage of the case mandatory
12 class mediation.

13 So this is a long introduction to my frustration on I
14 don't know what to do about your legal position in terms of the
15 PSLRA. And more specifically, I don't see in your timetable
16 anything to deal with what Mr. Slack and RKS and others have
17 argued about the so-called sufficiency objection. So am I to
18 assume that you believe that there is no -- there is no
19 sufficiency motion that would ever be filed under your theory,
20 and it would only be the 12(b)(6) at some point.

21 Now, that's a lot of -- a lot of issues I've asked you
22 to deal with, and I'll be quiet now and let one or both of you
23 answer. And then after that, I'll turn to Mr. Slack and Mr.
24 Hamilton. And oh, I see Mr. Catalina for RKS. And we'll talk
25 about what to do with that.

1 But the ball's in your court now to help me understand
2 what it is you really want to do here from PERA's point of
3 view.

4 MR. DUBBS: Well, Your Honor, let me take a bite of
5 that. There are a number of issues, as the Court is aware.

6 Let me start from the proposition that you ask us to
7 go negotiate with the debtors to come up with a schedule to
8 implement a timeline for the 7023 motion or order. And we did
9 that. And we are very close. And I can get into that if you
10 want, and I will get into it at some point. And I think we can
11 reach closure on that issue in a few days, like, a week at the
12 outside.

13 THE COURT: Well, but (indiscernible) does closure
14 mean an agreement with the debtors?

15 MR. DUBBS: It means an agreement on scheduling with
16 the debtors.

17 THE COURT: Okay. Well, that's the best news I've
18 heard today.

19 MR. DUBBS: Well, agreement on the schedule. We got
20 lots of other things to fight about, but agreement on the
21 schedule.

22 Now, when we started to get into this and started
23 negotiations, the debtors had two overarching goals, which we
24 had problems with. Number one, which I'll return to, a motion
25 to dismiss, and they fought. And their position, and they dug

1 in their heels, is that a motion to dismiss has to precede
2 anything else. And they rely on the PSLRA for that
3 proposition, and I'll get back to that in a second.

4 THE COURT: Well, in other words, the motion to
5 dismiss your class action matter --

6 MR. DUBBS: Though, the motion --

7 THE COURT: -- before it's --

8 MR. DUBBS: Well, the motion to dismiss the complaint.

9 THE COURT: Okay.

10 MR. DUBBS: The substantive allegations of the
11 complaint. And they say, well, we're going to win on that, so
12 the class-action issue becomes moot because there will --

13 THE COURT: Well, no. Hold on.

14 MR. DUBBS: -- be no class action --

15 THE COURT: Where would this motion be filed, in the
16 bankruptcy court or the district court?

17 MR. DUBBS: It's in the bankruptcy court, according to
18 their view of the world.

19 THE COURT: But there's nothing to dismiss.

20 MR. DUBBS: Well, you ask them. They're saying that
21 this is part and parcel of the various motions on the
22 individual claims.

23 THE COURT: Okay.

24 MR. DUBBS: All right. So that's the way we
25 understand their position. So there will be a motion to

1 dismiss. You can call that 12(b)(6). You can put another
2 label on it. But that's that.

3 Then the other issue, which was overarching for them,
4 was the length of the proceedings. And as you can see by their
5 extensive collection of other things from other cases, which
6 I'm sure their paralegals worked very hard on, and kudos to
7 them, we are very close on that to the tune of and the metric
8 that is usually used, or often used, is how long between class
9 discovery and briefing and class certification. And they
10 offered 150 days, we started with ninety-one days, and we're at
11 119 days. So the spread there is between 150 days and 119
12 days. Now, that's not the be-all and end-all, but that's a
13 good metric of how we're doing.

14 The other thing that they looked at, which can be a
15 useful metric, is when a hearing on class certification might
16 take place. And they were saying October of '24. We said no,
17 no, that's too long. Why can't we do it this year, December of
18 '23. And we have recently told them, okay, we'll go to June of
19 '24. So the difference is between June and October 10 of '24
20 for that issue.

21 Now, those are metrics, and that's not every jot and
22 tittle of a schedule. But those are the key movers, except
23 for, let's go back to the motion to dismiss. Again, their view
24 of the world is they will make a motion to dismiss before Your
25 Honor and that will be definitive and there will be no case

1 after that. That gave us --

2 THE COURT: Okay. So if I could (indiscernible)
3 interrupt you, then they're essentially dismiss your entire
4 class motion, right?

5 MR. DUBBS: The entire class motion will go. And even
6 if --

7 THE COURT: Okay.

8 MR. DUBBS: -- the class motion were denied, PERA will
9 go individually because it has no claim.

10 THE COURT: Okay.

11 MR. DUBBS: The whole shebang will go out the window.
12 That's their view of the world as we understand it.

13 So the more we thought about that, the more it --
14 nothing, like, focuses the mind as bullets and motions to
15 dismiss. And so we looked into it, and we are still
16 considering making a motion to Judge Davila to withdraw the
17 reference in part. In part. And I know this is not the
18 easiest question. But we have no intention of withdrawing the
19 whole case but just the point dealing with the very
20 sophisticated issues of securities law.

21 And presumably, after Judge Davila decides one way or
22 the other, it will be up to him, of course, but the presumption
23 would be he would send it back here for the rest of the
24 proceedings. But --

25 THE COURT: Okay.

1 MR. DUBBS: -- I can't tell you what he will do. And
2 at that point, he may say, well, I'm stuck with the tar baby.
3 I'll just finish it. I don't know what he's --

4 THE COURT: But he also might -- but he also might
5 deny your motion, too.

6 MR. DUBBS: That's true. He may deny it, and we'll --

7 THE COURT: Okay.

8 MR. DUBBS: -- come back here and be where we are now.

9 So we tried to address in our own way their two major
10 issues, which was timing and length of the schedule and then
11 secondly, the motion to dismiss.

12 Now, an aside on the motion to dismiss, and this gets
13 into the whole issue of, which can be viewed as theoretical or
14 practical, about the application of Rule 23 and the PSLRA to
15 this action. The history of PSLRA, which I unfortunately lived
16 through, had to do with basically the business community going
17 to Congress and said, we have all these junkie class actions.
18 Some of them are junkier than others. We've got to get the
19 most junky ones screened out before we spend a fortune on
20 discovery.

21 THE COURT: Right. I understand.

22 MR. DUBBS: So they got -- and -- so --

23 THE COURT: I also lived through it. I didn't
24 practice in it, but I lived through it and watched it.

25 MR. DUBBS: So you know as well as I do what motivated

1 it.

2 So what's different here, well, a lot of things are
3 different. First, Your Honor's view of his discretion to
4 incorporate a class action into a bankruptcy of this magnitude,
5 which we believe has never been done before. And then against
6 that backdrop, having exercised that discretion, what rules
7 apply now. And 7023 does not say we are incorporating the
8 Federal Rules of Civil Procedure, jot and tittle and every
9 little paragraph and comma, in the PSLRA. It's an
10 incorporation by reference of another statute to give the Court
11 guidance and rules as to what should be done.

12 Now, that's a highly theoretical point. I'm the first
13 to grant that. And I'm not sure the Court needs to raise that
14 issue. But it was put down, perhaps in excessive caution, as
15 for purposes of putting everything on the table. But the point
16 is that we did not, rightly or wrongly, focus on the fact that
17 the motion to dismiss, they insisted over their dead bodies
18 that it be done first because of their rather sanguine view
19 that this whole case is going to go away on a motion to
20 dismiss. We thought --

21 THE COURT: Well, again, Mr. Dubbs, let me stop you.
22 In several prior hearings, each time I made reference to what
23 I'll call the 12(b)(6) motion to dismiss, I think Mr. Slack or
24 others would tell me, no, it's this motion for -- in different
25 terminology, it was the so-called sufficiency motion. But

1 that's really what we're talking about, right?

2 In other words, am I correct that your concern is that
3 the debtors want to challenge the sufficiency of your position,
4 and therefore, they make the argument that they are entitled to
5 discovery and testimony by experts before you come to that;
6 isn't that correct?

7 MR. DUBBS: No, Your Honor. That's not the way we
8 understand their position. Now, maybe we --

9 THE COURT: Okay.

10 MR. DUBBS: -- don't understand it correctly. We
11 understand their position to be, number one, before we get to
12 any class schedule or any class framework, there has to be a
13 full-blown motion to dismiss or sufficiency motion that will
14 be, if not identical, at least a very close cousin to what
15 happens in the district court. And they are going to then and
16 argue that the pleading is insufficient, that scienter has not
17 been properly pled, that -- and they've said this in their
18 papers this time around -- they're going to look at a lot of
19 other factors that are typically part of the bread and butter
20 of a 12(b)(6) motion in a district court. And that's what
21 their intention is.

22 Now, if we've misunderstood their intention, so be it,
23 and maybe we have to have more discussions on that. But that's
24 what we understand. And we have been saying that we wanted
25 that put down the road. And they said, no, no, no, no, no.

1 And you can't, and the reason you can't is because of the
2 PSLRA. And we said, number one, the PSLRA is not as rigid, nor
3 is it incorporated the way you think it is. And number two,
4 the Court has discretion to do what it wants to do.

5 And so that's where we're at loggerheads. And I think
6 our "compromise" or our approach to that is we would like to
7 take a shot at getting the reference withdrawn as to securities
8 issues embodied in the motion to dismiss or sufficiency motion
9 or however one wants to characterize it, and the rest of the
10 case stays before Your Honor. And the way the schedules --

11 THE COURT: Well, but Mr. Dubbs, I mean, isn't
12 implicit in that that if you make that motion, you will wait
13 and see what the district judge does, and you will argue that
14 the District judge should keep it. And maybe PG&E will agree.
15 I don't know. But I just -- then the bankruptcy aspect just
16 goes on the backburner. There's nothing to do until we wait
17 and see if the district judge tosses the lawsuit, right?

18 MR. DUBBS: Well, let's look at what they propose
19 before we answer that question directly. And I'm not ducking
20 it. This schedule, whether we pick their schedule, our
21 schedule, or somewhere in between, doesn't start for several
22 months. The motion to dismiss, the sufficiency motions, don't
23 have to be filed until December. And (indiscernible) --

24 THE COURT: Well, wait a -- December is only a few
25 weeks away. This is --

1 MR. DUBBS: Well, I understand.

2 THE COURT: -- in mid-October.

3 MR. DUBBS: Well, I understand that. I understand
4 that. Look, if they want to do some discovery during while
5 that motion's pending, we're happy to do it. But they don't
6 want to do it that way.

7 THE COURT: Okay. So if you have your way, leaving
8 aside what I'm supposed to do in the meantime, you make your
9 motion, whether it's a joint motion or just PERA or your law
10 firm. And if and when Judge Davila acts on it and grants it,
11 then you turn to the merits of the motion that you ask him to
12 decide. And --

13 MR. DUBBS: Yeah.

14 THE COURT: -- if he decides adverse to you, case is
15 over, right?

16 MR. DUBBS: That's right.

17 THE COURT: Okay. I mean, again, I'm not here to tell
18 you you can't make the motion. I'm just saying, it seems like
19 a long shot at this point. And I know you're going to make the
20 standard argument that bankruptcy judges aren't qualified to
21 decide all these fancy interstate things.

22 I have a bad habit, by the way, of recommending
23 frequently that motions to withdraw the reference be denied. I
24 don't know that I would take a position on this matter but --
25 and I was joking that I would give Judge Davila a bottle of

1 wine if he granted it. But I'm not taking a position on that.
2 I'm just saying that from a case management point of view, it
3 would seem that if there's a pending motion to withdraw, I
4 should just not waste my time to do anything. And I continue
5 to --

6 MR. DUBBS: Well, Your Honor -- I'm sorry.

7 THE COURT: Yeah, go ahead. Go ahead.

8 MR. DUBBS: Well, we have to keep in mind that while
9 this is happening, potentially, the rest of the train on a
10 parallel track keeps moving. They're going to presumably still
11 keep trying to bring people through the ADR process and settle
12 cases.

13 THE COURT: Well, what's wrong with that?

14 MR. DUBBS: No, there's nothing wrong with it. We're
15 the ones who said we should go on two tracks. There's nothing
16 wrong with it. I'm just reminding the Court that I thought you
17 were suggesting, well, there's not going to be any activity.
18 There's going to be lots of activity if they start writing
19 checks to everybody else who's a claimant.

20 So it's not like nothing's going to be going on. It's
21 just that this stage may be more elongated than was suspected.
22 But --

23 THE COURT: But I didn't mean that Mr. Slack and his
24 colleagues and his clients wouldn't be busy. I'm just saying
25 from a managing-this-mega-case, from my point of view, in terms

1 of this dispute, it seems to me that there's not much for me to
2 do while that motion's pending. The Rules on withdraw the
3 reference do say that while there's a motion to withdraw the
4 reference pending, the underlying matter goes forward. But as
5 a practical matter, I don't know what I would do on any pre-
6 motion discovery or things like that if it's going to be mooted
7 by later.

8 But let's not worry about that today. Today, you've
9 made it clear what a potential track for strategy is, and
10 you've clarified. And I understand your point. The other side
11 may have a contrary view, but it's not my place to rule one way
12 or the other on what you're planning. I just, I want to
13 understand it, and I think I do understand it a little better.

14 Okay. But see, one of the things that -- the problem
15 I was having, and it was even though I maybe would have liked
16 to have seen this position a few days ago, I did study it last
17 night. And I still -- there were just so many unknowns in
18 terms of timing. And I consider my responsibility for now to
19 make a decision to get that train moving. And I can't look at
20 an outline that you've submitted that has the first two or
21 three things with no timetable. That's all.

22 MR. DUBBS: Well, one way to shorten this whole thing
23 is, of course, if they filed or agreed to file their
24 "sufficiency motion" or motion to dismiss as to PERA's
25 complaint. Then, in a week or two, we can ask Judge Davila

1 what he thinks. And if he says, no, I don't want to do it
2 because you don't meet the 157 standards, I'm not going to hear
3 this, go home, or go back to Judge Montali, that's one answer.
4 And if he says, well, I think you've proved your threshold, now
5 I'm going to take the motion on the merits, that's another
6 answer. But we can get an answer on that hopefully quick, and
7 we anticipate the Second -- or the Ninth Circuit to -- in the
8 past, they've been pretty quick on this. But who knows. Or
9 it's not --

10 THE COURT: But it hasn't made a ruling. I listened
11 to the argument, actually, and I was certainly of the view that
12 that the court is going to do something. But it hasn't done it
13 yet, right?

14 MR. DUBBS: You're absolutely right.

15 THE COURT: Okay.

16 MR. DUBBS: You heard it the same thing we did.

17 THE COURT: Okay. All right. Okay. Well, but one
18 more question and then I'm going to let the other counsel be
19 heard. What, in terms of your proposed schedule, let's say,
20 whether you make your motion to withdraw the reference or you
21 don't, where does this mandatory class mediation come from? I
22 mean, who's mandating? Are you asking me to order some
23 mediation, and if so, who are the participants?

24 MR. DUBBS: Well, the answer is yes, we're ordering
25 you to order a mediation, which is within your power, because

1 we thought if people are interested in a potential resolution,
2 which Your Honor is naturally so, it might advance the ball
3 because we have not been successful, obviously, to date on
4 other modalities. So that's a suggestion. If you don't like
5 it, you don't feel comfortable ordering people to mediation,
6 we'll take it off the schedule. It's not necessary to the --

7 THE COURT: I'm --

8 MR. DUBBS: I'm sorry.

9 THE COURT: I'm very comfortable in ordering it. I
10 just didn't -- the word "mandatory" means that it's required
11 somewhere, and I would want to hear from the other side before
12 I'm determining that something is mandatory. I mean, I can
13 make it mandatory, but that's -- I'm the one that's pushed the
14 ADR procedure, right, so --

15 MR. DUBBS: Well, QED, Your Honor. I mean, I
16 thought --

17 THE COURT: Okay.

18 MR. DUBBS: Yeah, I mean --

19 THE COURT: Okay, Mr. Dubbs. Let's let Mr. Slack or
20 Mr. Hamilton speak, and then Mr. Catalina. I'll come back to
21 you.

22 But Mr. Slack, are you going to --

23 MR. SLACK: I'm going to start, Your Honor. Richard
24 Slack, Weil, Gotshal & Manges, for the reorganized debtors. I
25 have a couple of preliminary remarks, and then I'm going to

1 turn it over to Mr. Hamilton to present PG&E's position on the
2 proposed schedule itself.

3 So Your Honor, maybe the remark that I'll start with
4 is I want to address this concept of withdrawal of the
5 reference, which was raised by PERA in its proposal to the
6 Court. We got this proposal on Friday, which was the day our
7 submissions were due. And I quite frankly think there's a lot
8 in that proposal that still needs to be fleshed out to even be
9 able to understand it and be able to figure out what our
10 position would be on that.

11 And let me just -- let me just say that it's not clear
12 what's precisely being withdrawn. In their statement, they
13 talk about the claims being withdrawn. And if you're
14 withdrawing claims, that's one thing. Today, they're talking
15 about specific issues in the sufficiency, which is a motion to
16 dismiss. And as Your Honor will remember, we talked at great
17 length about the fact that whether you call it a sufficiency
18 objection or a 12(b)(6), we do intend to make, essentially,
19 motions to dismiss the PERA complaint in December. And that's
20 on the schedule that Your Honor put together.

21 But it's unclear what they're actually trying to
22 withdraw. And as Your Honor knows, there is permissive
23 withdrawal. There is mandatory withdrawal. And if you have
24 a -- if the position is is that these claims have certain
25 issues that are going to need to be decided under the

1 securities laws and therefore the reference is getting
2 withdrawn, we have to understand, I think, well, does that mean
3 just the PERA complaint and their claims get withdrawn, or
4 wouldn't that mean that everybody who's got a securities claim
5 would have to have their claims mandatorily withdrawn.

6 While PERA may be only concerned with its claims and
7 its motion to dismiss, the debtors have to consider any
8 proposal with respect to withdrawal of the reference as to how
9 it affects all of the claims and all of the motions to dismiss
10 and sufficiency arguments that are going on. So from our
11 perspective, we just simply do not understand yet what the
12 proposal is, how it would work.

13 Given an example, if you're saying you're going to
14 withdraw the reference with respect to part of the motion to
15 dismiss, we're going to be making very similar motions to
16 dismiss the RKS complaint. Baupost has a complaint that partly
17 relies on the PERA complaint and then some of their own
18 allegations.

19 So again, we don't understand how this is supposed to
20 work. So that's observation number one. Observation number
21 two on the --

22 THE COURT: Am I correct -- Mr. Slack, am I correct,
23 you haven't rejected the proposal out of hand yet?

24 MR. SLACK: Your Honor, I don't think we know what the
25 proposal is. And I'd have it --

1 THE COURT: Right. Well, okay. Then you haven't.

2 MR. SLACK: And I think we'd have to look what the law
3 is. I mean, it was a little surprising, but I think we want
4 to -- we want to understand it, Your Honor.

5 THE COURT: Okay. Again, Mr. Slack, I'm not
6 negotiating, and I hope you know I was joking about the bottle
7 of wine I would give Judge Davila. But my own experience is --

8 MR. SLACK: Yeah.

9 THE COURT: -- withdrawal of the references is one of
10 those threats that very rarely means anything because lawyers
11 who come in and say, oh, this involves interstate commerce and
12 nonbankruptcy law usually are just blowing smoke because --

13 MR. SLACK: Yeah.

14 THE COURT: -- this is all about claims objection,
15 which is fundamental core bankruptcy stuff. And the fact
16 that -- but again, I'm not lobbying against withdrawal of the
17 reference. I'm just trying to understand it. And you've made
18 it clear to me that withdraw what is the -- it's obviously not
19 the whole bankruptcy case. It's obviously something more than
20 just PERA's own individual standing.

21 But sure, I will wait until you and Mr. Dubbs come to
22 an agreement, if there is an agreement. Or if not, then if he
23 files his motion, I'll do what the Rules require. I'll make
24 sure the clerk sends it to the district court and may or may
25 not make a recommendation.

1 Okay. Go ahead. Second point, you had a second
2 point.

3 MR. SLACK: Well, the second point, still on the
4 motion to withdraw, is PERA's statement says, and maybe this is
5 being walked-back a little bit today. But PERA's statement
6 says they are going to make this motion after we file the
7 sufficiency hearing. In other words, they're not waiting for
8 us to agree to it. They've said they're going to make this
9 regardless.

10 And you have three schedules in front of you right
11 now. You have the debtors' schedule. You have RKS' schedule.
12 You have PERA's schedule. And I think Mr. Dubbs observed
13 correctly that under all of those schedules, the class
14 certification process doesn't start until sometime in the
15 spring of next year under all three, for different reasons.
16 And --

17 THE COURT: Yeah. I got it.

18 MR. SLACK: And so here's my point, Your Honor. And I
19 think this -- I think this is what you were essentially saying
20 here. Mr. Dubbs makes this motion to withdraw the reference.
21 The most prudent thing to do is for all of us to wait and see
22 what gets withdrawn, whether the district court's going to
23 hear -- if it gets withdrawn, is the district court going to
24 hear all the claims? Is it going to keep the class
25 certification motion? What's it going to do?

1 So the most prudent thing, it seems to, I think, us,
2 and this is obviously new, just looking at the proposal that
3 came in yesterday, is let them make their motion to withdraw.
4 And the Court, after the district court makes its decision,
5 there'll be plenty of time for Your Honor if it gets denied to
6 then at that time set some kind of a class-certification
7 schedule. In other words, there's no need to do that today.
8 And I would say that the most prudent thing is just to wait
9 until we see what's going on with PERA's motion in the district
10 court.

11 And so with that, Your Honor, if Your Honor is
12 inclined to actually look at the schedules today, I'm going to
13 turn it over to Mr. Hamilton to discuss some of the issues that
14 Mr. Dubbs raised and let you know why we think our schedule is
15 the one that makes the most sense here.

16 THE COURT: Well, before Mr. Hamilton speaks, let me
17 go back and just make sure we're on the same page. At the
18 start of the hearing, I complained a little bit to Mr. Dubbs
19 and Mr. Etkin about how I was in the dark until yesterday. So
20 the document that PERA filed or prepared in, I guess, the end
21 of September, which it labeled "confidential negotiation
22 communication", which was Exhibit 21 to your submission of two
23 days ago, said joint motion to withdraw the reference. So
24 that's what I was preparing for there was in a reference to a
25 joint motion. What Mr. Dubs filed yesterday, it's no longer a

1 joint motion. It's a motion.

2 So I was operating under the presumption that perhaps
3 PG&E was on board, and this would be a joint motion. You've
4 made it clear that maybe it is and maybe it isn't. You don't
5 know what it is yet. Okay. So we're in the same -- we're in
6 agreement there.

7 MR. SLACK: And Your Honor, just to be clear, we got
8 this proposal to have this motion for withdrawal on Friday,
9 just the same day that we filed our submission so --

10 THE COURT: Well, I know, but the thing that you got a
11 few days earlier that was marked confidential, which was
12 September 27th, I believe, isn't that when you first got that
13 one that had the joint motion in there?

14 MR. SLACK: Your Honor, the first time we got any kind
15 of a proposal -- I think we knew that PERA was thinking about
16 making a proposal for withdrawal of the reference, but the
17 first time that there was actually a proposal that we saw was
18 this Friday.

19 THE COURT: Okay. It doesn't matter. The point is
20 that Mr. Dubbs has now said he plans to make a motion, and
21 maybe PG&E is going to consider whether it would join that
22 motion or oppose it. And again, I don't speak for RKS or
23 anyone else. But from my point of view, a joint motion would
24 be much different. And I probably would -- I would probably
25 voluntarily recommend that the district court withdraw the

1 reference if there could be a clarification consistent with the
2 clarification you asked, what is being withdrawn.

3 And so I would like that to get fleshed out. And if
4 PG&E's response is we're not filing, we're not joining a
5 motion, then fine. Mr. Dubbs can make his motion, and I'll
6 figure out what to do about it while we wait. If PG&E joins
7 that motion, it's a much different dynamic, from my point of
8 view.

9 Now, in terms of what Mr. Hamilton would offer and
10 RKS' counsel, it's true that in front of me today are three
11 different schedules, but for the reasons that I stated, the
12 PERA schedule is complete -- it's like a big piece of Swiss
13 cheese. There's so many holes in it. I can't consider it
14 because I don't know what the time frame of it is.

15 So it almost is though, what's the point in trying to
16 reconcile a difference between RKS and PG&E when maybe PG&E
17 will come around to agree with PERA and support a motion to
18 withdraw the reference. So I'm almost inclined to take the
19 risk here of sending you back to the drawing board again and
20 see in another two weeks. I hate doing that because I am
21 concerned about the need to keep moving.

22 But so with that background, and I'll call on Mr.
23 Hamilton. But Mr. Hamilton, I don't think it would be terribly
24 constructive today to try to take apart the PERA timetable and
25 argue for yours. If you want to tell me why your timetable is

1 preferable to RKS', that's fine, but those don't seem to be
2 dramatically different at this point. But go ahead and make
3 whatever presentation you want.

4 MR. HAMILTON: All right. Thank you, Your Honor.
5 Joshua Hamilton of Latham & Watkins on behalf of the
6 reorganized debtors. Your Honor, what we heard today largely
7 was consistent with our position in that we do believe that
8 this, whether you call it a claims objection or a sufficiency
9 objection, the threshold thing that needs to be resolved by the
10 Court is a motion to dismiss because at its heart this is a
11 securities class action --

12 THE COURT: Yes.

13 MR. HAMILTON: -- and it needs to be determined based
14 on the substance. There's the Barnes v. Edison case, which was
15 recently decided on very similar facts on a motion to dismiss.
16 And that's a threshold issue that I think everyone should agree
17 needs to be resolved before anything else happens so -- and
18 that's on the calendar, Your Honor. That's in December, we
19 will be filing those. So things will be moving along. I don't
20 have a -- and can discuss with Mr. Slack as well.

21 In terms of the rest of it, RKS and PG&E are largely
22 in aligned in terms of the overall schedule. And so to the
23 extent that these issues that we were just given to us, as far
24 as the reference and withdrawal, as Mr. Slack said, we haven't
25 had a chance to address those. But the bottom line that's

1 important overall is that the motion to dismiss or whatever
2 threshold legal issues need to take place before there's
3 anything else moves forward, before there's class
4 certification, before there's discovery, because that shapes
5 the case, whether it's going to --

6 THE COURT: Mr. Hamilton, what about mandatory first
7 try at mediation, which is --

8 MR. HAMILTON: Well, that's a --

9 THE COURT: -- it's box 2 in Mr. Dubbs' submission of
10 yesterday.

11 MR. HAMILTON: Yeah.

12 THE COURT: Can I order that?

13 MR. HAMILTON: Can you order it?

14 THE COURT: Well, I mean, yeah. I mean, of course I
15 can, yeah. But I mean --

16 MR. HAMILTON: Yeah, and that -- again, that's
17 something that obviously in terms of those discussions, we're
18 open to those. But that's, again, something that was placed to
19 us on the day we were providing our submission. We haven't
20 talked to our client. We haven't assessed that particular
21 offer.

22 THE COURT: Well, Mr. Hamilton, you're perhaps now
23 to --

24 MR. HAMILTON: Yeah.

25 THE COURT: -- in my court. I'm sure you're not new

1 to class actions. And but I'm quite experienced in being a
2 mediator. And one thing that's got to be the most frustrating
3 in the world as a mediator is when people ask you to go to
4 mediation, the first thing they say is we got to take some more
5 discovery. So when somebody says let's have a mandatory
6 mediation schedule while the other side's saying we're going to
7 take a bunch of discovery, it's like what's the point of having
8 the mediation.

9 MR. HAMILTON: Right.

10 THE COURT: So I am not ready to order mediation
11 unless both sides agree to it, in which case I don't really
12 have to order it. I can say great. Go do it. So I'll take
13 mandatory mediation off the table at this point.

14 Now, so you don't -- you as a class action specialist,
15 you're not offended by the -- or it doesn't make a huge
16 difference whether we call it a 12(b)(6) of a sufficiency. A
17 12(b)(6) motion is itself a challenge to the sufficiency of the
18 complaint in any 12(b)(6) motion, right?

19 MR. HAMILTON: Correct, under the heightened pleading
20 standards for pleading the securities class action.

21 THE COURT: But even in the run-of-the-mill Iqbal
22 Twombly world if you just plead a bunch of garbage and you
23 don't state a theory of relief, your motion to dismiss will be
24 granted. Period. So if it's a heightened standard for
25 securities litigation, so be it. But what do you think of Mr.

1 Dubbs' suggestion that maybe the PSLRA doesn't even apply?

2 MR. HAMILTON: Yeah, well I think it's --

3 THE COURT: And this is a bankruptcy claims objection.

4 MR. HAMILTON: Well, those are two really -- I think
5 two different issues. There's one, you know, the PSLRA's
6 procedural issues in terms of whether or not a stay of all
7 proceedings should take place, whether or not the specific
8 procedures within the PSLRA apply. I do want to note in terms
9 of that argument, the PSLRA -- and it's even quoted what -- is
10 that Rule 23 is incorporated, right, into 7023. And so what
11 the PSLRA says is that there's a stay of any proceedings for
12 any claim brought pursuant to Rule 23. So essentially the
13 PSLRA and the Rule 23 is going to be incorporated into the
14 bankruptcy rules for the purpose of a securities class action.
15 There's not -- we looked. There's no specific going either
16 way. But I believe that this is unique in that this is a
17 securities class action so at its heart, it should be litigated
18 like a securities class action.

19 But those are -- substantively the claims have to be
20 pled under the 10(b)(5) heightened pleading standard. Those
21 are the Supreme Court cases that's going to be unquestioned.
22 This is not a run-of-the-mill class action. This is a
23 securities class action with -- you have to plead all the
24 claims with a heightened pleading standard. You have to plead
25 (indiscernible). Even in PERA's brief if you looked at what

1 they said, they specifically said these create numerous thorny
2 issues of substantive federal securities logs.

3 THE COURT: Yeah, no. I understand.

4 MR. HAMILTON: Yeah.

5 THE COURT: And yet on the other hand, I think
6 everybody has said -- at least at a prior hearing, I believe
7 every counsel were in agreement that this is almost a first --

8 MR. HAMILTON: Right.

9 THE COURT: -- in terms of a major bankruptcy case
10 with a claims objection that's in place after a very, very
11 thorough ADR process. And then in the middle of it, we're
12 taking in a Rule 23.

13 I mean, I agree with you. The Rule, Bankruptcy Rule,
14 says FRCP 23 applies. So it's hard to imagine that these
15 issues that you mentioned don't apply. But there's no caselaw
16 on the point anywhere, right. No bankruptcy court or court of
17 appeals has dealt with any bankruptcy court doing it in this
18 set of -- kind of a setting. Right? Do you know of any case?

19 MR. HAMILTON: We have not identified it. But we also
20 haven't seen somebody saying otherwise.

21 THE COURT: Yeah, no. I understand. I understand.

22 Okay. All right. So your point, I think, is you're
23 going to -- your recommendation at the moment, unless there is
24 a decision by your client to join forces with PERA and take
25 something to the district court, is to proceed in this court to

1 file your -- we'll call it a motion to dismiss without putting
2 any labels on it. But if that motion were granted, what goes
3 out the door? Every securities claim?

4 MR. HAMILTON: That's right.

5 THE COURT: So not just PERA and its counsel. Every
6 securities claim?

7 MR. HAMILTON: Well, we'd be filing them as to the
8 specific claims that have been filed in the Bankruptcy Court.
9 So if the motion to dismiss is granted, the cases are over. Or
10 the claims.

11 THE COURT: Well, I understand. But there's 2,000
12 claims, right? Are we going to have 2,000 respondents?

13 MR. HAMILTON: Well, we would certainly address the
14 PERA. And then I think we would have to address in terms of if
15 anyone who filed -- I think some people have an opportunity to
16 either join PERA's complaint or file their own. And we would
17 have to address, to the extent that they've satisfied the
18 pleading standards or haven't, to a specific claim.

19 THE COURT: Well, yeah, but RKS on its own has got
20 over 700 of them, I believe.

21 MR. HAMILTON: Right. Right.

22 THE COURT: I mean, I --

23 MR. SLACK: Yeah. Your Honor, can I take that for a
24 second? I may be able to help a little bit here. Because I
25 think your question suggests that there might be thousands of

1 separate sufficiency motions. And I don't think I -- I don't
2 think that's what's going to happen here.

3 So there have been three parties that have filed
4 separate complaints.

5 THE COURT: Right.

6 MR. SLACK: PERA, RKS -- and again, I said Baupost is
7 sort of a hybrid because they essentially joined PERA, but then
8 filed a supplement which has some substantive evaluations. And
9 so there's no question that there's going to be sufficiency
10 objections/12(b)(6) motions with respect to those three
11 complaints.

12 THE COURT: Okay.

13 MR. SLACK: Your Honor, and I -- but two things. So
14 there are people who have joined those complaints. So
15 obviously if Your Honor were to dismiss those, then those
16 people who joined those complaints would also have their claims
17 dismissed. So RKS, for example, has, like, 750 claimants who
18 have joined their claims. PERA has -- I think there's a few
19 dozen now that have joined the PERA complaint. And all of
20 those would be dismissed.

21 And I think, Your Honor, we said this, so this is not
22 going to come as a surprise. Anybody who hasn't either filed a
23 complaint or joined one of the complaints is likely to be
24 subject to an omnibus sufficiency objection as well, but that's
25 just going to be one of them.

1 THE COURT: Well, you've made that clear. You've made
2 that clear.

3 MR. SLACK: Yeah. So I think you're really looking at
4 essentially four motions. Not dozens, not hundreds, and
5 certainly thousands -- really objections, not motions -- that
6 are likely to get filed.

7 THE COURT: Okay. I got it. I mean, that makes
8 sense. And I really wasn't worried about 2,000 respondents.
9 But I had to understand and make sure we're clear. We're back
10 to what is it you're objecting to. And Mr. Slack, I think you
11 clarified it. And I know that between PERA and its district
12 court complaint and those that have joined it plus RKS, we've
13 got an awful lot of them accounted for.

14 Okay. Well, Mr. Hamilton, do you want to spend some
15 time to argue for the time table for PG&E v. RKS or should we
16 just assume that maybe that's not worth worrying about because
17 we're either going to be dealing with a motion to withdraw the
18 reference -- but in any event, we'll be dealing with your
19 sufficiency motion on a much earlier time table. So I guess my
20 question is, why should I worry about reconciling the competing
21 schedules if the entry point is your sufficiency motion?

22 MR. HAMILTON: I think that's fair, Your Honor. If we
23 file our motion to dismiss/sufficiency motion in December, to
24 the extent that the briefing schedule needs to be amended or
25 changed a bit to accommodate RKS' schedule, we're not going

1 to -- we thought we were trying to move things as efficiently
2 as possible and have a very streamlined briefing schedule for
3 the motions to dismiss. But to the extent that RKS or someone
4 else needs a few more weeks here or there to file an
5 opposition, we're not going to hold things up for that.

6 THE COURT: Well, and we already have a status
7 conference tentatively scheduled after you filed the motion,
8 right?

9 MR. HAMILTON: Right.

10 THE COURT: Okay.

11 MR. HAMILTON: That's right.

12 THE COURT: Well, I -- again, I've been doing an awful
13 lot of talking here and I want to let counsel for RKS be heard
14 and come back to Mr. Dubbs after that, but I'd be inclined not
15 to try to reconcile the two competing schedules of RKS and the
16 debtors at this point.

17 And to the extent that there's a third competing
18 schedule that Mr. Dubbs filed, as I say, it's not something I
19 can act on because I think Mr. Dubbs and his side have to
20 decide whether they're going to ask the district judge to do
21 it, and that's up to them and when to do it. And I don't think
22 it would be fruitful -- excuse me -- to get into a debate about
23 that schedule if he's got a motion to withdraw the reference
24 that he wants to be presented. And I have no idea when Judge
25 Davila would hear it or what his outcome would be, and it's not

1 my business, so.

2 Why don't we let RKS' counsel, Mr. Catalina -- I
3 thought I would hear from Mr. Bodner today, but I guess you got
4 the duty, so.

5 MR. CATALINA: I did. I did, Your Honor. Thank you.
6 Yeah.

7 THE COURT: Congratulations.

8 MR. CATALINA: We can say that. Thank you very much.

9 Yeah, I think we generally agree. I mean, our kind of
10 first principles, right, that we put in the papers we submitted
11 would be we have an order in place right now, the July 28th
12 order, that kind of governs how we contemplated before this
13 7023 motion practice occurred how to move forward with the
14 claims allowance process, and that's -- and that is moving
15 forward, right. The October deadline to pass the sufficiency
16 objections are coming up. And as Your Honor said, have a case
17 management conference where it's contemplated that we would
18 discuss timing on briefing with regard to the sufficiency
19 objections. And as Your Honor pointed out, PG&E and we are not
20 so far apart there.

21 One of the other first principles that we put in our
22 papers is we would agree with PERA that the PSLRA doesn't apply
23 to the claims allowance process in the Bankruptcy Court here.
24 We would disagree, however, with -- I mean, the PSLRA doesn't
25 apply, but we think it's very important that the sufficiency

1 objection/motion to dismiss, whatever you want to call it,
2 occurs prior to the class certification process because -- and
3 one of the things that we haven't talked -- there's been a lot
4 of talk about kind of an all or nothing with regard to motions
5 to dismiss. I'll just point out, PERA's complaint in the
6 district court has 19, I believe, misstatements pled. I know
7 that our amendment has 20-some-odd. I don't have the number in
8 front of me.

9 The way that motion to dismiss practice typically
10 occurs in these securities class actions or securities claims
11 is that sometimes some of the misstatements are trimmed.
12 Sometimes the contours of what claims actually get past the
13 motion to dismiss change. And that changes the contours,
14 potentially, of a class, right. So class period is often
15 defined based on the misstatements, the corrective disclosures
16 that are pled in the complaint.

17 So one of the issues we raise in our papers is until
18 you get past that sufficiency process, it can be unclear what
19 misstatements, which corrective disclosures are in the case.
20 And therefore, what the contours of the actual potential class
21 are.

22 I would also like to point out, and maybe this is
23 leaping a little bit with regard to withdrawing the reference.
24 In PERA's papers, in their footnote 4, they say that the class
25 complaint does not allege claims based on transactions in 67

1 separate securities, but instead only in common stock and eight
2 debt securities. So it's a little unclear if PERA's saying
3 that their class definition would only encompass purchases in
4 the equity securities and in eight of the debt securities. If
5 the removing of reference for a motion to dismiss that only
6 includes nine securities out of sixty-some-odd securities that
7 are on the proof of claim form in this bankruptcy, it's unclear
8 what that means for the rest of the securities, right.

9 So right now, I think the class definition is very
10 unclear. And I think we have to go through this sufficiency
11 process to -- before you can start taking discovery and making
12 motions on class certification. So that's another principle
13 that we have.

14 Other than that, as far as the PSLRA application
15 question, that's not something that we extensively researched
16 and briefed here. I think that's going to come up on the
17 sufficiency objections, right. Because it sounds like PG&E is
18 going to argue that the Court should determine those
19 sufficiency objections in that framework. And obviously we,
20 and I presume others, will argue the opposite.

21 The last thing I'd say is that -- and as Your Honor
22 noted, right, it's going to be up to the district court if PERA
23 makes the motion. But we've gotten to the point where we got
24 the July 28th order in place. We have a framework going
25 forward towards claims allowance. The ADR procedures are

1 actually moving forward and occurring as we speak. Withdrawing
2 the reference seems to us to just put this back on that
3 merry-go-round to nowhere. It seems to us just another kind
4 of -- whether it's a tactic for delay, will result in delay. I
5 point out that in the district court case against the directors
6 and officers, before the stay was even entered, there was a
7 motion to dismiss pending there for a long period of time.

8 THE COURT: Well yeah, but Judge Davila has stayed
9 that, right, for all this time?

10 MR. CATALINA: He has stayed it.

11 THE COURT: Which is why PERA took this case to the
12 court of appeal, right?

13 MR. CATALINA: Yes. Yes, he has stayed it. But
14 before even staying it -- all I'm saying is that removing this
15 to the district court to have motion practice there from our
16 point of view does not seem like something that will resolve
17 these claims more efficiently, more quickly. We want to
18 continue moving forward. From day 1 that's been our interest.
19 And every time I've had the pleasure of appearing before Your
20 Honor, that's what we're trying to do, is to keep this claims
21 allowance process moving forward. And we're making some
22 progress here and we think that that should be the north star
23 here.

24 THE COURT: Well, Mr. Dubbs can speak for himself, but
25 I've never been of the impression that PERA is trying to delay

1 the process here. They were frustrated by -- that's why they
2 took the district court matter before the circuit. And I
3 believe they were pushing for a schedule here -- leaving aside
4 withdrawal of the reference, their schedule was much more
5 aggressive and much quicker than either you or the debtor was
6 agreeable to.

7 So again, that's for another day or for another court.
8 And the proof is in the pudding. PERA and its counsel will
9 either stick with their plan and make a motion to withdraw the
10 reference or not. And if they don't, I guess they're not
11 trying to use the district court as a stalling tactic.

12 MR. CATALINA: Well, I would just -- to go back to the
13 origins of the July 28th order which has put us on a track to
14 claims resolution, it was about a year ago, Your Honor, that
15 the RKS claimants first appeared in front of Your Honor,
16 objecting to PG&E's, the reorganized debtors', request to
17 extend the objection deadline another time.

18 THE COURT: Right.

19 MR. CATALINA: Which really got the ball rolling to
20 where it was, how were we going to push forward to the claims
21 allowance process, which resulted in the July 28th order.

22 So certainly, we are focused on trying to move forward
23 with the claims allowance process. And we have concerns. And
24 again, as Your Honor said, it's not going to be necessarily up
25 to you if they move, but that going the district court route is

1 not --

2 THE COURT: Well, a handful of your clients have
3 settled, so the claims process has worked for them and worked
4 for whatever other number that Mr. Slack has reported have
5 settled and is distinguished from those who didn't even
6 respond, and thus their objections -- okay. Listen. Let's let
7 Mr. Dubbs have his final comment.

8 But let me say to you, Mr. Dubbs, my inclination is to
9 anticipate and tell Mr. Hamilton and everybody else that I'm
10 expecting until told otherwise by DJ (phonetic) that I will be
11 dealing with the motion to dismiss in December, and consistent.
12 But in the meantime, I'll continue for another couple of weeks
13 if you want to talk to Mr. Slack and see if you can come up
14 with some compromise on the withdraw of the reference or
15 anything else. But with that, if you think that's worth doing,
16 it's no big deal to pencil in a hearing in a couple of weeks to
17 let you report back on that. So tell me what you would like.

18 MR. DUBBS: Yeah, I think it's worth taking that
19 approach and seeing whether any progress can be made in the two
20 weeks. And I've heard Mr. Slack and people have had their say,
21 but maybe some other conversations might or might not be
22 helpful. No promises, but I think it's worth doing; that's not
23 the one --

24 THE COURT: Well, why don't we do this. I'll give you
25 a date now on our PG&E calendar a couple of weeks out. And if

1 you reach some sort of a consensus with the debtor that's fine.
2 And I think it would be helpful to either tell me by then you
3 have, in fact, filed your motion to withdraw the reference or
4 that you're going to or not going to if that's the decision.
5 And because again, I am mindful that the law requires or
6 provides that a bankruptcy judge does not stay a matter just
7 because there's a motion to withdraw the reference. And I'm
8 not kidding when I tell you I have a pretty good track record
9 of persuading district judges not to withdraw the reference.
10 So but whether I take a position on this one is another story.

11 But at least if in a couple weeks you tell me we filed
12 our motion or we're going to file our motion or we've got an
13 agreement or PG&E is joining us or something, that's progress.
14 But for now, I'll anticipate having our case management
15 conference just before Christmas on the other schedule before
16 we go from here. And obviously, we'll have to factor in what
17 to make of any motion to withdraw the reference. I don't
18 imagine it will be heard that quickly. I mean, it might be
19 heard by December, but I don't imagine it will be heard on an
20 expedited basis. But who knows; that's for you and the
21 assigned judge to decide.

22 So Ms. Prada, our next PG&E calendar is when? October
23 28th? No. November? Oh, wait. I lost her. Ms. Prada, are
24 you there? No.

25 Ms. Thomas, are you there?

1 THE COURT REPORTER: I'm sorry, Your Honor.

2 THE COURT: Okay.

3 THE COURT REPORTER: I'm having connection issues
4 today.

5 THE COURT: What's our next PG&E calendar?

6 THE COURT REPORTER: I've lost my calendar, but I
7 believe --

8 THE COURT: Mr. Slack or Mr. Dubbs knows all these
9 things. I should know them too. Hold on. We'll figure out
10 when the next PG&E calendar is.

11 THE COURT REPORTER: I'm sorry, Your Honor. All of
12 my --

13 THE COURT: Ms. Thomas, do you know?

14 MR. DUBBS: Your Honor, I think it's November 7th, is
15 the next one that I see.

16 THE COURT: Let me double check. Yeah, that seems
17 right.

18 THE CLERK: Yes, Your Honor. November 7th at 10
19 o'clock.

20 THE COURT: Okay. Mr. Dubbs, I'm going to continue
21 today's hearing to November 7th at 10 o'clock for a status on
22 the matters that we've left for you to talk to Mr. Slack about
23 and for a report on what your intentions are. And but the plan
24 will be that I am not going to act on the competing schedules.
25 I'm going to follow the timetable that Mr. Hamilton alluded to

1 that everybody's familiar with. And that's our -- my
2 recollection is it's just before Christmas, a status
3 conference.

4 Isn't that right? December 19th, Ms. Prada?

5 THE COURT REPORTER: I'm sorry, Your Honor. I'm still
6 trying to reboot all my programs.

7 THE COURT: Let me doublecheck, yeah. Mr. Hamilton,
8 do you remember? Isn't that a date we set aside?

9 THE CLERK: I believe it's December 19th.

10 THE COURT: Yeah, that's -- okay. So for planning
11 purposes, the November 7th hearing on this aspect of PG&E is
12 for just a check-in and where things stand on PERA and the
13 motion to withdraw and what have you. And for the bigger
14 picture, the hearing for a status conference on where we go
15 after that for the motion to dismiss or sufficiency motion,
16 whatever the debtors have called it, will take place on
17 December 19th at 10 o'clock.

18 All right. Anyone have anything else to chip in or
19 raise before we adjourn?

20 Mr. Dubbs?

21 MR. DUBBS: Yes, just a couple of quick points. First
22 of all, Mr. Hamilton I think articulately expressed their view
23 that the full panoply of pleading and other mechanical aspects
24 of securities cases apply to any decision on a 12(b)(6), or
25 call it something else, motion. That doesn't surprise me. I'm

1 just underscoring it for the Court.

2 Secondly, in terms if there's been some issues about
3 timing and what have you, Exhibit 21 was a document provided
4 under the protections noted on it. We never thought it would
5 become public. We were never asked whether it could become
6 public. And it said joint motion to withdraw the reference.
7 And that was a proposal to them. And they never said yes or no
8 until today, to the extent that they said it. So that's just a
9 matter of housekeeping. And beyond that, we will get back to
10 you by November 7th with the matters that Your Honor outlined.

11 THE COURT: Okay. But Mr. Dubbs, let me repeat again.
12 I wasn't -- I hope you didn't take it as a complaint, you
13 personally or your colleagues. I've had so many hearings
14 involving your client and you and Mr. Etkin that I usually am
15 up to date on what's happening. And so here I am two days
16 before today's hearing and PERA is a mystery to me. And
17 finally I got attached to Mr. Slack's filing, the so-called
18 confidential -- not so-called, the confidential schedule. And
19 it was the first time I was aware of any of these events. I
20 guess it might have been preferable if you would -- never mind.
21 I got it and I got your filing and I know where we are on
22 things. So I will stay tuned and look forward to seeing
23 whatever developments happen on November 7th on this issue.
24 And if it gets resolved, we don't even have to have the
25 hearing. And for now, then, we're planning to deal with the

1 December 19th matter.

2 Anything else you -- yes, sir. Go ahead.

3 MR. DUBBS: Finally, I want to apologize for the
4 confusion that we obviously created and the burden on the Court
5 because of our internal issues as to what had to be filed, what
6 didn't have to be filed, what was part of the informal
7 negotiation process, and what had to be filed for the Court.
8 And that won't happen again. Thank you.

9 THE COURT: No apologies are necessary. This is a
10 complicated matter for everybody. For the lawyers, for the
11 clients, for me, for staff, for everything. So it's not worth
12 making a big deal out of, and we move on.

13 All right. Anything else from anyone on any subject?

14 MR. ETKIN: Your Honor, if I may?

15 THE COURT: Yes, sir. Mr. Etkin?

16 MR. ETKIN: One housekeeping matter.

17 THE COURT: Yes.

18 MR. ETKIN: I think at the end of your ruling decision
19 on the 7023 motion there was discussion of entering an order
20 that simply said that the motion was granted in accordance with
21 the decision placed on the record on that day. I don't think
22 an order has been entered yet to that effect. And we just
23 wanted to ask Your Honor whether you wanted us to upload an
24 order to that effect, discuss it with Mr. Slack and Mr.
25 Catalina and whoever was --

1 THE COURT: Well, is it important to you? I mean, I
2 realize what -- if you wish to seek an appeal. And certainly
3 to the extent that you might be putting together a motion to
4 withdraw the reference, it might be part of the complete record
5 of what the Bankruptcy Court has done. So I have no problem
6 with it. You don't have to, again, tell me what your strategy
7 is.

8 But Mr. Slack, any objections? I think I probably did
9 say that.

10 MR. SLACK: Yeah. I mean, I would say, Your Honor, it
11 seems unnecessary. But Your Honor did say and ruled the way
12 you ruled. So whether it's unnecessary or not, I'll leave it
13 to Mr. Etkin whether he wants to press that.

14 THE COURT: Okay. Mr. Etkin, go ahead and --

15 MR. ETKIN: Well, and yeah, there's nothing strategic
16 about it whatsoever.

17 THE COURT: Mr. Etkin, go ahead and ask Mr. Slack to
18 sign off on the form of it. And if he approves it as to form,
19 it will be signed without discussion.

20 Okay. All right. Thank you all for your time,
21 everyone. Appreciate the hard work on the complexities of this
22 matter. So with that, I'll conclude the matter. Have a good
23 day, everyone.

24 (Whereupon these proceedings were concluded)
25

C E R T I F I C A T I O N

I, River Wolfe, certify that the foregoing transcript is a true and accurate record of the proceedings.



/s/ RIVER WOLFE, CDLT-265

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Date: October 18, 2023

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